

**Executive Summary – Enforcement Matter – Case No. 41607**

**L. H. Lacy Company, LTD.**

**RN103062907**

**Docket No. 2011-0705-AIR-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

AIR

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Portable Trench Burner, Dallas County

**Type of Operation:**

Portable trench burner

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** September 2, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$2,100

**Amount Deferred for Expedited Settlement:** \$420

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$840

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$840

Name of SEP: North Central Texas Clean School Bus Program

**Compliance History Classifications:**

Person/CN - Average

Site/RN - High

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41607**

**L. H. Lacy Company, LTD.**

**RN103062907**

**Docket No. 2011-0705-AIR-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** March 15, 2011

**Date(s) of NOE(s):** May 3, 2011

***Violation Information***

1. Failed to submit a Permit Compliance Certification ("PCC") within 30 days after the end of the certification period. Specifically, the PCC for the certification period from October 23, 2009 through October 22, 2010 was due on November 22, 2010 but was not submitted until January 31, 2011 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit ("FOP") No. O3104/General Operating Permit ("GOP") No. 518, Terms and Conditions (b)(2) and (b)(3)(D)(ii)].

2. Failed to submit a semi-annual deviation report within 30 days after the end of the reporting period. Specifically, the semi-annual deviation report for the reporting period from April 23, 2010 through October 22, 2010 was due on November 22, 2010 but was not submitted until January 31, 2011 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), TEX. HEALTH & SAFETY CODE § 382.085(b), and FOP No. O3104/GOP No. 518, Terms and Conditions (b)(2) and (b)(3)(C)(ii)(c)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

On January 31, 2011, the Respondent submitted the PCC for the certification period from October 23, 2009 through October 22, 2010 and the semi-annual deviation report for the reporting period from April 23, 2010 through October 22, 2010.

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)
2. The Order will also require the Respondent to:
  - a. Within 30 days, implement measures and/or procedures to ensure the timely submittal of PCCs and semi-annual deviation reports; and
  - b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision 2.a.

**Executive Summary – Enforcement Matter – Case No. 41607**

**L. H. Lacy Company, LTD.**

**RN103062907**

**Docket No. 2011-0705-AIR-E**

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** John Muennink, Enforcement Division, Enforcement Team 5, MC R-12, (713) 422-8970; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

**Respondent:** George R. Rivero, Chief Financial Officer, L. H. Lacy Company, LTD., P.O. Box 541297, Dallas, Texas 75354

**Respondent's Attorney:** N/A



Attachment A  
Docket Number: 2011-0705-AIR-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** L. H. Lacy Company, LTD.

**Penalty Amount:** One Thousand Six Hundred Eighty Dollars (\$1,680)

**SEP Offset Amount:** Eight Hundred Forty Dollars (\$840)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** North Central Texas Council of Governments

**Project Name:** North Central Texas Clean School Bus Program

**Location of SEP:** Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise Counties

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **North Central Texas Council of Governments** for the *North Central Texas Clean School Bus Program*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to provide reimbursement to schools, school districts, or school bus operators that retrofit, repower, or replace older school buses with newer model year buses or cleaner technology. Retrofitting, in this context, means installing devices to reduce exhaust emissions that are verified or certified by the U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB) as proven retrofit technologies. Repowering, in this context, means replacing older engines with newer, cleaner engines but keeping the same vehicle body. All replacement engines must be certified or verified by the EPA or CARB.

Buses replaced with the SEP Offset Amount must be buses that are not budgeted for replacement within the next twelve months. Any buses that are replaced with new buses will no longer be driven, must be fully decommissioned, and may only be sold for scrap. The Third-Party Recipient shall provide proof of decommissioning to the TCEQ for each new bus purchased with SEP Funds.

L. H. Lacy Company, LTD.  
Agreed Order - Attachment A

The Third-Party Recipient shall conduct a competitive call for projects that will be open to schools, school districts, and school bus operators in the 16-county NCTCOG service area. Scoring will be based on several key criteria including emissions reductions, cost-effectiveness, operation area(s), and vehicle usage.

This is an air pollution reduction program designed to reduce ozone formation and particulate matter emissions, directly impacting the health of school children traveling on buses. The primary emissions focus will be on reductions of nitrogen oxides (NO<sub>x</sub>) with a secondary focus on particulate matter and other toxics associated with diesel emissions.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

The Project will directly benefit air quality by reducing exhaust emissions which contribute to the formation of ozone. In addition to containing the ozone precursors NO<sub>x</sub> and hydrocarbon, as well as particulate matter and carbon monoxide, diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

**C. Minimum Expenditure**

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

North Central Texas Council of Governments  
Attention: Amanda Brimmer, Senior Transportation Planner  
PO Box 5888  
Arlington, Texas 76005-5888

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

L. H. Lacy Company, LTD.  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
PO Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.







# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	2-May-2011	<b>Screening</b>	10-May-2011	<b>EPA Due</b>	
	<b>PCW</b>	10-May-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	L. H. Lacy Company, LTD.		
<b>Reg. Ent. Ref. No.</b>	RN103062907		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41607	<b>No. of Violations</b>	2
<b>Docket No.</b>	2011-0705-AIR-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	John Muennink
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$100
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Notes: Enhancement for one NOV with same/similar violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$73  
Approx. Cost of Compliance \$1,750

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,100
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$2,100
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,100
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$420
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$1,680
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Screening Date 10-May-2011

Docket No. 2011-0705-AIR-E

PCW

Respondent L. H. Lacy Company, LTD.

Policy Revision 2 (September 2002)

Case ID No. 41607

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103062907

Media [Statute] Air

Enf. Coordinator John Muennink

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement for one NOV with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

Screening Date 10-May-2011

Docket No. 2011-0705-AIR-E

PCW

Respondent L. H. Lacy Company, LTD.

Policy Revision 2 (September 2002)

Case ID No. 41607

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103062907

Media [Statute] Air

Enf. Coordinator John Muennink

Violation Number 1

**Rule Cite(s)** 30 Tex. Admin. Code §§ 122.143(4) and 122.146(2), Tex. Health & Safety Code § 382.085(b), and Federal Operating Permit ("FOP") No. O3104/General Operating Permit ("GOP") No. 518, Terms and Conditions (b)(2) and (b)(3)(D)(ii)

**Violation Description**

Failed to submit a Permit Compliance Certification ("PCC") within 30 days after the end of the certification period. Specifically, the PCC for the certification period from October 23, 2009 through October 22, 2010 was due on November 22, 2010 but was not submitted until January 31, 2011.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes

The Respondent failed to meet 100% of the rule requirement.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1 70 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$1,000

One single event is recommended for the one late certification.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$73

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

# Economic Benefit Worksheet

Respondent L. H. Lacy Company, LTD.  
Case ID No. 41607  
Reg. Ent. Reference No. RN103062907  
Media Air  
Violation No. 1

Percent Interest 5.0  
Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$1,500	22-Nov-2010	31-Oct-2011	0.94	\$70	n/a	\$70
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	22-Nov-2010	31-Jan-2011	0.19	\$2	n/a	\$2

Notes for DELAYED costs

Estimated expense to submit the PCC for the certification period from October 23, 2009 through October 22, 2010 and the semi-annual deviation report for the reporting period from April 23, 2010 through October 22, 2010 and to implement measures and procedures to ensure the timely submittal of PCCs and semi-annual deviation reports. The Dates Required were the due dates for the certification and the semi-annual report. The Final Dates are the date that the certification and the semi-annual report were submitted and the date that corrective measures are estimated to be completed.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,750

TOTAL

\$73

Screening Date 10-May-2011

Docket No. 2011-0705-AIR-E

PCW

Respondent L. H. Lacy Company, LTD.

Policy Revision 2 (September 2002)

Case ID No. 41607

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103062907

Media [Statute] Air

Enf. Coordinator John Muennink

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(C), Tex. Health & Safety Code § 382.085(b), and FOP No. Q3104/GOP No. 518, Terms and Conditions (b)(2) and (b)(3)(C)(ii)(c)

## Violation Description

Failed to submit a semi-annual deviation report within 30 days after the end of the reporting period. Specifically, the semi-annual deviation report for the reporting period from April 23, 2010 through October 22, 2010 was due on November 22, 2010 but was not submitted until January 31, 2011.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

## &gt;&gt; Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

The Respondent failed to meet 100% of the rule requirement.

Adjustment \$9,000

\$1,000

## Violation Events

Number of Violation Events 1

70 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended for the one late report.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,050

This violation Final Assessed Penalty (adjusted for limits) \$1,050

# Economic Benefit Worksheet

**Respondent** L. H. Lacy Company, LTD.  
**Case ID No.** 41607  
**Reg. Ent. Reference No.** RN103062907  
**Media** Air  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Economic Benefit ("EB") for Violation No. 2 is included in the EB for Violation No. 1

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

LCA

**TOTAL**

\$0

# Compliance History

Customer/Respondent/Owner-Operator: CN600491294 L. H. Lacy Company, LTD. Classification: AVERAGE Rating: 2.82

Regulated Entity: RN103062907 TRENCH BURNER Classification: HIGH Site Rating: 0.00

ID Number(s): AIR OPERATING PERMITS PERMIT 3104  
 AIR OPERATING PERMITS ACCOUNT NUMBER 921032L  
 AIR NEW SOURCE PERMITS ACCOUNT NUMBER 921032L  
 AIR NEW SOURCE PERMITS AFS NUM 4877702028  
 AIR EMISSIONS INVENTORY ACCOUNT NUMBER 921032L

Location: PORTABLE

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: May 09, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 09, 2006 to May 09, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: John Muennink Phone: (713) 422-8970

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 08/24/2010 (843281)
  - 2 04/01/2011 (901727)
  - 3 04/27/2011 (906841)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 09/07/2010 (843281) CN600491294

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.146(1)  
 30 TAC Chapter 122, SubChapter B 122.146(2)  
 5C THSC Chapter 382 382.085(b)

Description: Failure to submit the annual compliance certification as required in 30 TAC 122.146.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.145(2)(C)  
5C THSC Chapter 382 382.085(b)

Description: Failure to submit the six month deviation report as required in 30 TAC 122.145  
(2)(C).

F. Environmental audits.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
L. H. LACY COMPANY, LTD.  
RN103062907**

**§        BEFORE THE  
§  
§        TEXAS COMMISSION ON  
§  
§        ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-0705-AIR-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding L. H. Lacy Company, LTD. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a portable trench burner in Dallas County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 8, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand One Hundred Dollars (\$2,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eight Hundred Forty Dollars (\$840) of the

administrative penalty and Four Hundred Twenty Dollars (\$420) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Eight Hundred Forty Dollars (\$840) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on January 31, 2011, the Respondent submitted the Permit Compliance Certification ("PCC") for the certification period from October 23, 2009 through October 22, 2010 and the semi-annual deviation report for the reporting period from April 23, 2010 through October 22, 2010.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Plant, the Respondent is alleged to have:

1. Failed to submit a PCC within 30 days after the end of the certification period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.146(2), TEX. HEALTH & SAFETY CODE § 382.085(b), and Federal Operating Permit ("FOP") No. O3104/General Operating Permit ("GOP") No. 518, Terms and Conditions (b)(2) and (b)(3)(D)(ii), as documented during a record review conducted on March 15, 2011. Specifically, the PCC for the certification period from October 23, 2009 through October 22, 2010 was due on November 22, 2010 but was not submitted until January 31, 2011.
2. Failed to submit a semi-annual deviation report within 30 days after the end of the reporting period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), TEX. HEALTH & SAFETY CODE § 382.085(b), and FOP No. O3104/GOP No. 518, Terms and Conditions (b)(2) and (b)(3)(C)(ii)(c), as documented during a record review conducted

on March 15, 2011. Specifically, the semi-annual deviation report for the reporting period from April 23, 2010 through October 22, 2010 was due on November 22, 2010 but was not submitted until January 31, 2011.

### **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

### **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: L. H. Lacy Company, LTD., Docket No. 2011-0705-AIR-E" to:  
  

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eight Hundred Forty Dollars (\$840) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, implement measures and/or procedures to ensure the timely submittal of PCCs and semi-annual deviation reports, in accordance with 30 TEX. ADMIN. CODE §§ 122.145 and 122.146; and
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Air Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

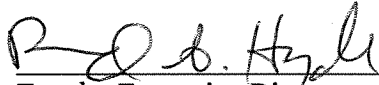
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

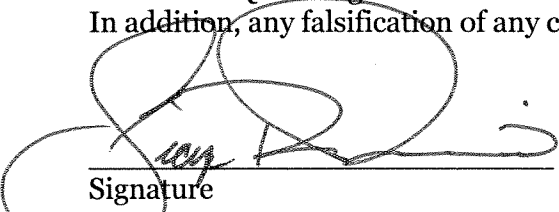
9/12/11  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

08/02/2011  
\_\_\_\_\_  
Date

GEORGE B. RIVERO  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
L. H. Lacy Company, LTD.

CFO  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

**Attachment A**  
**Docket Number: 2011-0705-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** L. H. Lacy Company, LTD.

**Penalty Amount:** One Thousand Six Hundred Eighty Dollars (\$1,680)

**SEP Offset Amount:** Eight Hundred Forty Dollars (\$840)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** North Central Texas Council of Governments

**Project Name:** North Central Texas Clean School Bus Program

**Location of SEP:** Collin, Dallas, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise Counties

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **North Central Texas Council of Governments** for the *North Central Texas Clean School Bus Program*. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to provide reimbursement to schools, school districts, or school bus operators that retrofit, repower, or replace older school buses with newer model year buses or cleaner technology. Retrofitting, in this context, means installing devices to reduce exhaust emissions that are verified or certified by the U.S. Environmental Protection Agency (EPA) or the California Air Resources Board (CARB) as proven retrofit technologies. Repowering, in this context, means replacing older engines with newer, cleaner engines but keeping the same vehicle body. All replacement engines must be certified or verified by the EPA or CARB.

Buses replaced with the SEP Offset Amount must be buses that are not budgeted for replacement within the next twelve months. Any buses that are replaced with new buses will no longer be driven, must be fully decommissioned, and may only be sold for scrap. The Third-Party Recipient shall provide proof of decommissioning to the TCEQ for each new bus purchased with SEP Funds.

L. H. Lacy Company, LTD.  
Agreed Order - Attachment A

The Third-Party Recipient shall conduct a competitive call for projects that will be open to schools, school districts, and school bus operators in the 16-county NCTCOG service area. Scoring will be based on several key criteria including emissions reductions, cost-effectiveness, operation area(s), and vehicle usage.

This is an air pollution reduction program designed to reduce ozone formation and particulate matter emissions, directly impacting the health of school children traveling on buses. The primary emissions focus will be on reductions of nitrogen oxides (NO<sub>x</sub>) with a secondary focus on particulate matter and other toxics associated with diesel emissions.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

The Project will directly benefit air quality by reducing exhaust emissions which contribute to the formation of ozone. In addition to containing the ozone precursors NO<sub>x</sub> and hydrocarbon, as well as particulate matter and carbon monoxide, diesel exhaust is known to cause or exacerbate a number of respiratory diseases, including asthma.

**C. Minimum Expenditure**

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

North Central Texas Council of Governments  
Attention: Amanda Brimmer, Senior Transportation Planner  
PO Box 5888  
Arlington, Texas 76005-5888

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:



L. H. Lacy Company, LTD.  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
PO Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that the Project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.